



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

South Tower – Suite 1950
225 Peachtree Street
Atlanta, GA 30303
(404) 331-5300 FAX: (404) 331-5280

May 6, 2014

Calvin Moore, Assistant Federal Security Director
Department of Homeland Security
Transportation Security Administration
8400 N.W. 36th Street, Third Floor
Miami, FL 33166

Mark J. Berkowitz, P.A.
800 S.E. Third Avenue, Suite 400
Ft. Lauderdale, FL 33311

Re: U. S. Department of Homeland Security
Border and Transportation Security Directorate
Transportation Security Administration
and
American Federation of Government Employees,
Local 558
Miami, Florida
Case No. AT-CA-14-0304

Gentlemen:

Enclosed is a copy of the unfair labor practice charge which has been filed with this Office and assigned the case number shown above. To complete the investigation expeditiously, and to make a determination as to the merits of the charge, it is important that the parties cooperate fully during the ensuing investigation of the charge. You will be contacted shortly by the Agent who has been assigned to investigate the charge. If you have any questions please contact directly either the Agent or Regional Point of Contact indicated below.

If you are the party who filed the charge (Charging Party) and have not already done so, please submit the following so that it is **received** by this Office by **May 16, 2014**:

1. A list of witnesses - names, positions, day and evening telephone numbers, and a summary of their expected testimony about their personal knowledge of the charge.
2. Copies of all relevant documents, with an Index if submission is voluminous.

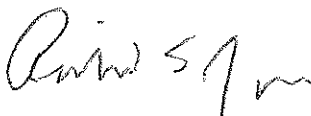
Section 2423.4(e) of the FLRA's Regulations requires that you provide this evidence/information. If you did not submit any evidence or information when you filed the charge and do not provide the material noted above so that this Office has **received** it by **May 16, 2014**, the charge may be dismissed for lack of cooperation. The Charging Party is responsible for confirming that all supporting evidence and information has been received by the date noted above.

If you are the party against whom this charge is filed (Charged Party), you are requested to review the allegations in the charge and submit a written position to this Office. You also are expected to cooperate fully in the investigation and will be asked by the Agent to supply documentary evidence or witnesses as is deemed necessary.

To assist both parties in understanding how an unfair labor practice charge is processed, I have enclosed an information sheet describing the investigatory process. Also, if someone other than you will be representing your party in this matter, please complete the enclosed "Notice of Designation of Representative."

The General Counsel encourages the informal resolution of the unfair labor practice charges and the assigned Agent is available to assist the parties in resolving this matter. More information concerning the General Counsel's dispute resolution services is contained in the enclosed question and answer sheet.

Sincerely,




Richard S. Jones
Regional Director

Assigned Agent: Brent S. Hudspeth
404/331-5300 Ext. 5022
bhudspeth@flra.gov

Enclosed: Notice of Designation of Representative

cc: Phil Lore, President
AFGE, Local 558
17300 Frank Road
Alva, FL 33920

Luis Rincon
24101 S.W. 123rd Avenue
Homestead, FL 33032

 <p>UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY CHARGE AGAINST AN AGENCY</p>	FOR FLRA USE ONLY	
	Case No. <u>AT-CA-14-0304</u>	
	Date Filed <u>4/24/14</u>	

Complete instructions are on the back of this form.

<p>1. Charged Activity or Agency Name: Transportation Security Administration Address: 8400 N.W. 38th Street, Third Floor Miami, FL 33168 Tel.#: (305) 718-3346 Ext. Fax#:</p>	<p>2. Charging Party (Labor Organization or Individual) Name: AFGE Local 558 Address: 600 S.E. Third Avenue, Suite 400, Ft. Lauderdale, FL 33168 Tel.#: (954) 527-0570 Ext. Fax#: (954) 767-0483</p>
<p>3. Charged Activity or Agency Contact Information Name: Calvin Moore Title: Assistant Federal Security Director, Screening Address: 8400 N.W. 38th Street, Third Floor, Miami, FL 33168 Tel.#: (305) 421-2405 Ext. Fax#:</p>	<p>4. Charging Party Contact Information Name: L. Rincon; A. Gaudin; J. Calloway Title: Address: Tel.#: (941) 457-5122 Ext. Fax#:</p>

5. Which subsection(s) of 5 U.S.C. 7116(a) do you believe have been violated? [See reverse] (1) and (a)(1)

6. Tell exactly WHAT the activity (or agency) did. Start with the DATE and LOCATION, state WHO was involved, including titles.

Pursuant to the collective bargaining agreement ("cba") between the Agency, Transportation Security Administration ("TSA") and the American Federation of Government Employees ("AFGE"), TSA explicitly recognized the Title II rights of AFGE members under the Family Medical Leave Act of 1993 ("FMLA"). Specifically, under Article III, Section D (3) (i), of the applicable cba--

(3) Employee Eligibility

(i) Under the provisions of Title II of the FMLA, TSA employees are eligible for up to 12 or 26 administrative weeks of leave without pay ("LWOP"), in a twelve month period for certain family and medical needs.

Members of AFGE Local 558, previously employed by TSA, have properly provided medical documentation to qualify for leave under the FMLA. However, even though AFGE Local 558 members have documented their need for medical leave, as eligible employees under the FMLA, and notwithstanding the fact that those medical leave requests have been approved by the Agency, TSA has used those bona fide leave requests, as a basis for discipline, including termination, against eligible employees.

This unfair labor practice charge is being submitted as a class charge, because eligible employees, who are qualified to obtain medical leave under the FMLA, are being subjected to discipline, including the ultimate penalty of termination. We note three examples here, who are representative of the class:

Transportation Security Officer ("TSO") Luis Rincon, who had qualified for intermittent leave under the FMLA, was subjected to removal from the federal service on February 25, 2014, by Miami Assistant Federal Security Director, Screening, Calvin Moore, because of the employee's need for intermittent leave under the FMLA;

TSO Adrienne Gaudin, who had qualified for intermittent leave under the FMLA, was subjected to removal from the federal service on January 9, 2014, by Miami Assistant Federal Security Director, Screening, Calvin Moore, because of the employee's need for intermittent leave under the FMLA; and


TSO Juliana Calloway, who had qualified for intermittent leave under the FMLA, was subjected to removal from the federal service on October 31, 2013, by Miami Assistant Federal Security Director, Screening, Calvin Moore, because of the employee's need for intermittent leave under the FMLA.

This unfair labor practice charge is being submitted on behalf of AFGE Local 558 members and members of the applicable collective bargaining unit, who have exercised their rights under Art. III, Sec. D (3) (i) of the applicable cba.

7. Have you or anyone else raised this matter in any other procedure? ☒ No ☐ Yes If yes, where? [see reverse]

8. I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX 4 BY [check "x" box] ☐ Fax ☒ 1st Class Mail ☐ In Person

☐ Commercial Delivery ☐ Certified Mail

LUIS F RINCON  4-24-14
Type or Print Your Name Your Signature Date

LAW OFFICES
MARK J. BERKOWITZ, P.A.

800 S.E. THIRD AVENUE
SUITE 400
FT. LAUDERDALE, FL 33316

TELEPHONE: (954) 527-0570
TOLL FREE: (877) 991-7117

SATELLITE OFFICE
701 BRICKELL AVENUE
SUITE 1550
MIAMI, FL 33131

TELECOPIER: (954) 767-0483
EMAIL: labor@markjberkowitz.com
WEBSITE: www.markjberkowitz.com

Via Facsimile No. (404) 331-5280

Mark Halverson
Federal Labor Relations Authority
225 Peachtree Street, N.E.
Suite 1900
Atlanta, Georgia 30303

April 24, 2014

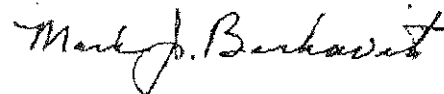
Re: Charging Party: Luis Rincon
Respondent: Transportation Security Administration
Unfair Labor Practice Charge Against the Agency

Dear Mr. Halverson:

I am attaching an unfair labor practice charge on behalf of Luis Rincon; two additional charges on the same or similar set of facts will also be filed on behalf of other Agency employees, Adnie Gaudin and Jutana Calloway.

If you have any questions, please contact my office.

Yours truly,



Mark J. Berkowitz

cc: Calvin Moore
Assistant Federal Security Director, Screening
Transportation Security Administration
8400 N.W. 36th Street, Third Floor
Miami, Florida 33166



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
DESIGNATION OF REPRESENTATIVE

and	Charged Party
	Charging Party

CASE NO.

AT-CA-H-0304

Fill out the information in the boxes in sections 1 and 2 below

Section 1 - Party	
Section 2 - Representative Information	
Name	Telephone No.
Title	Cell No.
Address	Fax No.
	E-mail
City	State ZIP

The person named above represents the party named in Section 1 in this case. Please serve this representative with all written communications, except for subpoenas. This designation remains effective until it is revoked or a new designation is filed.

Name (please print or type)

Signature

BSH

ULP DATA ENTRY (revised March 2014)

TSA
Miami, FL

CASE NUMBER: AT-CA-14-0304 DATE FILED: 4/24/14
 PROFESSIONAL ASSIGNED: (Code P1) B514 DATE: 4-25-14
 PROFESSIONAL REASSIGNED: (Code P2) _____ DATE: _____
 PROFESSIONAL CO-ASSIGNED: (Code P3) _____ DATE: _____
 OPENING LETTER ISSUED: (Code O1) 5/6/14
 INITIAL ISSUE CODE: AA2.01
 DISPOSITIVE ISSUE CODE: A07.12

DESCRIPTION (AN ENTRY MUST NOW BE MADE IN THIS BLOCK)

- ☐ Executive Order; Labor Relations forum activities or section 7106(b)(1)
- ☐ Raises novel or interesting issue
- ☐ Involves potentially sensitive issue
- ☐ Concerns an issue of nationwide impact that may cross Regional Office geographic or jurisdictional boundaries
- ☐ Injunction requested by charging Party
- ☐ Not Applicable

COMMENTS: (e.g., Related Case Number or any other information region would like to add)

KEY WORD CODES: (INSERT APPLICABLE CODE NUMBER IN FOLLOWING ACTION TABLE)

Example: Withdrawal Solicitation was After RD Determination; record "2" for Withdrawal Solicitation

Withdrawal Solicitation

- 1a) Prior to RD determination w/supervisory approval
- 1b) Prior to RD determination w/o supervisory approval
- 2) After RD determination
- 3) Unsolicited withdrawal

Scope

- 1) Dispositive action without the taking of formal evidence
- 2) Dispositive action prior to completion of full investigation
- 3) Dispositive action after full investigation

Cooperation (by charged party)

- 1) Full cooperation with affidavits and witnesses
- 2) Agent talked to witnesses - no affidavits
- 3) Submission of documentary evidence
- 4) Submission of statement of position
- 5) Agent talked to charged party representative
- 6) Cooperation not required

Remedy

- 1) Backpay - dollar amount _____
- 2) Make whole - dollar amount _____
- 3) Status quo ante (bargaining)
- 4) retroactive bargaining
- 5) rescission of action (non-bargaining)
- 6) other traditional remedy - FLRA posting, cease & desist order, prospective order (cases involving formal discussion, Weingarten, dues withholding, (a)(1) statement, prospective bargaining)
- 7) novel remedy (i.e., supervisory training)
- 8) other

Method

- 1) On-site affidavits and evidence
- 2) Telephone affidavits
- 3) Sworn questionnaire
- 4) Confirming letters
- 5) Unsworn questionnaire
- 6) On-site conversation
- 7) Telephone/E-mail conversation

Prosecutorial discretion

- 1) Yes
- 2) No



UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY

South Tower – Suite 1950
225 Peachtree Street
Atlanta, GA 30303
(404) 331-5300 FAX: (404) 331-5280

August 27, 2014

Mark J. Berkowitz, P.A.
800 S.E. Third Avenue, Suite 400
Ft. Lauderdale, FL 33311

Re: U.S. Department of Homeland Security
Border and Transportation Security Directorate
Transportation Security Administration
and
American Federation of Government Employees,
Local 558
Miami, Florida
Case Nos. AT-CA-14-0304, AT-CA-14-0305 and
AT-CA-14-0306

Dear Mr. Berkowitz:

This confirms your request to withdraw the unfair labor practice charges in the captioned cases.

Based upon this request to withdraw, I have approved the withdrawal of the charges.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Jones", is written over the typed name.

Richard S. Jones
Regional Director

cc: Calvin Moore, Assistant Federal Security Director
U.S. Department of Homeland Security
Transportation Security Administration
8400 N.W. 36th Street, Third Floor
Miami, FL 33166